

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10322
Docket No. 9704-T
2-MP-SMW-'85

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

(Sheet Metal Workers' International Association
(A.F.L. - C.I.O.
Parties to Dispute: (
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated the controlling agreement, particularly Rule 97 and Letter of Understanding of March 23, 1950, when Electrician was assigned to silver solder leak in cooling coil for Ajax refrigerator used on engine, then purged system and charged with freon gas, North Little Rock, Arkansas.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Sheet Metal Worker M. J. Guenther in the amount of two hours (2') at the pro rata rate, May 15, 1980, as he was available to perform this Sheet Metal Workers' work.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Carrier, on May 15, 1980, at its Diesel Shop at North Little Rock, Arkansas, assigned an Electrician to repair a refrigeration unit located in a locomotive. The Electrician silver soldered a leak in the cooling coil in the Ajax refrigerator then purged and charged it with freon gas.

The Organization contends this work is within the confines of its classification of Work Rule 97 and, therefore, a violation. It also argues the assignment is a breach of a Letter of Understanding dated March 23, 1950. In further support, the Organization directs our attention to Jurisdictional Award #11 and Second Division Award 7579 which involved the same parties.

Rule 97 of the Agreement reads, in pertinent part:

"Sheet Metal Workers'...work shall consist of tinning, coppersmithing and pipefitting in shops, on passenger coaches, cabooses and commissary cars and engines of all kinds;...The bending, fitting, cutting, threading, brazing, connecting and disconnecting of air, water, gas, oil and steam pipes...oxyacetylene, thermit and electric welding on work generally recognized as Sheet Metal Workers' work...and all other work generally recognized as Sheet Metal Workers' work."

Jurisdictional Award #11 reads, in part:

"Claim

Removing, replacing, repairing, testing, and maintaining of all steam, oil, water, gas, air and drain pipes in air conditioning and refrigeration equipment.

Decision

The removing, replacing, repairing, testing, and maintaining of all steam, oil, water, gas, air and drain pipes in air conditioning and refrigeration equipment is Sheet Metal Worker's work as provided in Rule 64 of the current agreement on this property.

The over-all inspection and testing of air conditioning and refrigeration equipment is Electrical Workers' work.

This understanding is intended only to settle above jurisdictional dispute on the Cincinnati Union Terminal Company between the two organizations parties to such dispute and the settlement thereof and is not to be construed as affecting the rights or jurisdiction of any other craft, and further, this understanding is to apply only on this railroad and not to be considered or used as a precedent affecting any other railroad..."

The March 23, 1950, letter addressed to both Electrician and Sheet Metal Worker Craft Representatives is as follows:

"Mr. W. J. Lyons
Mr. S. B. Shock

Confirming verbal instructions in meeting in my office with Electrician Craft (Messrs Lyons, Smith & Driskill) and Sheet Metal Worker Craft (Messrs. Shock, Boebeling and Hammonds) present:

The servicing, maintaining and repairing of electric drinking fountains at North Little Rock Shops will be handled in accordance with past practice, i. e., Electrician Craft will maintain and repair all electrical equipment, compressors, will also connect and disconnect refrigeration lines and water supply lines inside cabinet in performing this work and to remove and replace coils.

"Sheet Metal Workers Craft will maintain and repair all sheet metal work, will repair coils when necessary to remove and will also gas the boxes when necessary.

S/John Whalen"

Second Division Award 7579 found the work involved of disconnecting freon gas piping from compressor to condensor coil, replacing the compressor and cutting, fitting and silver soldering copper pipe on a three ton air conditioning unit belongs to the Sheet Metal Workers under the provisions of Rule 97. Therefore, Referee O'Brien did not pursue the Carrier claim of past practice. That dispute arose on May 29, 1975. In the interim, the Organization served the Carrier with a Section 6 Notice which sought to amend Rule 97 and exclusively reserve work on refrigerant piping to Sheet Metal Workers. The Carrier has not agreed to this proposed amendment. In 1980, Second Division Award 8427, also involving the same parties, ruled contrary to Award 7579. This case arose in the Carrier's Fort Worth, Texas shops when an Electrician was assigned to unsolder copper pipes from a compressor on a window unit air conditioner, changed the compressor, and resoldered the copper pipes.

Considering all the above information, this Board is unable to find that the work in dispute is explicitly covered by Rule 97. If it were, then the Organization would have had no reason to propose that refrigerant piping be exclusively reserved to the Sheet Metal Workers. The placing of refrigerators on locomotives was at the time of this dispute relatively new, and the refrigerators replaced electric water coolers. The on-the-property handling indicates that Carrier informed the Organization that electricians always maintained electric water coolers. This statement was not denied or rebutted. The record also contains a number of statements given by Electricians which support Carrier's statement on electric water coolers and also indicate Electricians have historically performed refrigeration work at North Little Rock.

In the absence of finding the work in dispute to be set forth in Rule 97, we turn to the Organization's arguments dealing with Jurisdictional Award #11 and the March 23, 1950, letter. We are asked to draw a parallel analogy from Award #11 and apply the outcome to this dispute. The decision incorporated language which provided that air conditioning and refrigeration equipment was Sheet Metal Workers' work as provided in Rule 64. Notwithstanding, that Award specifically settled a jurisdictional dispute with two Organizations and the Cincinnati Union Terminal Company and it was agreed the understanding:

"...is to apply only on this railroad and not to be considered or used as a precedent affecting any other railroad."

In addition to the above quote, the Board notes that the Sheet Metal Workers claim in Award #11 favorably defined work on air conditioning and refrigeration equipment and, in effect, added to the specific language of Rule 64 which, apparently, covered the Organization's Classification of Work. Such is not the case with respect to Rule 97, especially when consideration is given to the Organization's 1975 Section 6 Notice.

Thus, we come to the March 23, 1950, letter from Shop Superintendent John Whalen. The subject matter is the servicing, maintaining and repairing of electric drinking fountains at North Little Rock. Almost five lines are devoted to the specific work reserved to the Electricians. Referring to the Sheet Metal Workers' Craft, a general statement of maintenance and repair of Sheet Metal work is set forth which logically references Rule 97. Specifically, the Organization is given the repair of coils when necessary to remove and also the gassing of boxes when necessary. Singularly, these divisions of work are said to be in accordance with past practice. Despite Carrier objections of relativity, we have considered this letter and are unable to hold that it is supportive of the claim herein since there is no evidence the cooling unit was removed for repair. Secondly, aside from fixing practices as of 1950, the subject matter singularly refers to electric drinking fountains.

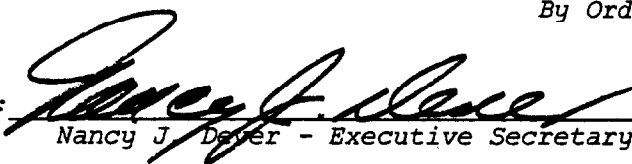
In summation, this Board has found no support for the Organization's claim under Rule 97. Jurisdictional Award #11 is not applicable. The March 23, 1950, letter is not supportive of the claim. Award 7579 is distinguishable in that subsequent events require our holding that work on refrigerant piping is not incorporated into Rule 97. We also view the statements given by Electricians concerning past practice to be un rebutted in the record. Finally, we find no evidence of past practice which would confirm this claim. Accordingly, we will deny it.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 6th day of March 1985.